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Quid Novi



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McGILL UNIVERSITY FACULTY OF LAW
UNIVERSITE McGILL FACULTE DE DROIT

February 17, 1992
le 17 février, 1992

NEWS FROM THE MCGILL LAW JOURNAL/LA REVUE DE DROIT DE MCGILL

By Hanson Hosein, Managing Editor/
Directeur administratif (with some
mighty fine editing by David Chemla
and Michelle Cumyn)

Si vous venez nous rendre visite à la Revue, vous verrez qu'on s'y affaire comme des fourmis dans une fourmilière. Et puisque vous, les étudiants de la Faculté, êtes nos amis, nos lecteurs, nos abonnés, nos anciens, nos candidats de l'avenir, nos auteurs et nos évaluateurs, nous aimerions vous mettre au courant de nos activités et de nos projets.

A. 36(4) IS NOW AVAILABLE

As you may or may not recall, every student at the Faculty is a subscriber to

the McGill Law Journal. You can usually pick up your copy of the Journal at Sadies. However, it seems that a number of people are not aware that this great bounty of scholarship is available at the same place that they buy their chocolate bars and newspapers.

Therefore, in an effort to ensure that a maximum number of people get their hands on a copy of our latest issue, Journal members will be on hand on February 18th and 20th, from 12:00 to 2:00 P.M. in the Pit to distribute 36(4) to second, third and fourth year students. Please bring your student I.D. so that your name can be checked off our lists. If you do not make it on these dates, the Journal will be available at Sadies the week after. First year students are not

eligible as their subscription does not begin until Volume 37.

The content of 36(4) includes: the doctrine of precedent; the feminization of collective bargaining; the Canadian Board of Railway Commissioners (Canada's first national regulatory agency); EC Company and securities law, colloque sur l'arrêt Schachter et l'étendue du pouvoir des tribunaux d'ordonner aux gouvernements de modifier leurs programmes sociaux en vertu de la Charte; case comments on Sullivan and Lemay, Sparrow, Keegstra, Alberta Dairy Pool; book reviews on the right to die and the future of labour and employment law.

Cont'd on p.4

DIARY OF A FIRST YEAR STUDENT

By Randy Hahn, LLB I

[This article was first published two issues ago, but was unfortunately cut in half! We apologize to the author and to our readers, and reprint it now in full for your reading pleasure.]

MONDAY

Life is full of tough choices, I have a short break and have to choose between attending a lecture by Herb Gray on the Canadian economy, or listening to my new heavy metal CD. I end up choosing the

CD knowing that Mr. Gray is, of course, very much into the punk rock scene in Montreal and no doubt many of his friends from that community will be in attendance. I know he will have a large audience.

TUESDAY

I receive a telephone call from Boris Yeltsin. He explains that he has heard that for a course called «Foundations» I wrote an essay on his call for a return to

DANS CE NUMÉRO IN THIS ISSUE

Announcements ... p.2

Education Equity ... pp. 2-3

THE PITS ... p.5

Greenspace (x2) ... p.6

Cont'd on p.5

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ANNOUNCEMENTS - ANNONCES

CHARITY BASH - The third annual Charity Bash will be held on Wednesday February 19, 1992 at 8:00 pm at the Blue Dog, 3550 St. Laurent. The proceeds go to «Dans La Rue». PLEASE COME ALL AND PARTY!

BOOKSTORE - The bookstore will not be open after Reading Week. You must get your books this week. Tuesday, 18 Feb. 12-2; Thursday, 20 Feb. 11-1.

CZECHOSLOVAKIA 1992 - The Law Faculty of Charles University cordially invites law and social science students and their respective faculties to participate in a special Summer Law School Program in Prague. The program will consist of a series of lectures, in English, on the legal, political and economic developments in Czechoslovakia. The primary focus will be on Czechoslovakia's transition from a socialist, centrally-managed society to one based on a free market economy.

Dates: from August 24, 1992 - September 12, 1992

Deadline for registration : February 29, 1992

Fees: \$600 US (to be paid no later than April 30, 1992 upon receipt of a letter of acceptance).

Fees will cover accommodation at a modern, well-equiped student residence (a WC, shower and small kitchen shared between one pair of double rooms); daily breakfast; lunch on weekdays; and oficial excursions.

The Law Faculty reserves the right to cancel the

Summer School Program in the event of insufficient demand or for other sufficient cause. Any such decision to cancel the program will be made no later than April 30, 1992.

For further information, please contact Associate Dean David Stevens, or the Charles University Law Faculty at:

Czechoslovakia 1992
 Vojtech Cepl, Vice Dean and Director of Summer Law School Program
 Pravnicka Fakulta Univerzity Karlovy
 Nam. Curieovych 7
 116 40 Praha 1
 C.S.F.R.

EDUCATIONAL EQUITY - The Academic Assistance Committee would like your views or critics about implementing a voluntary tutorial programme for all years. Le but de ce programme sera d'aider les étudiants dans les cours où ils ont de la difficulte. Please direct your comments to Tanya Goldberg at 937-5764 or leave a message for her at S.A.O. Please do so promptly. Thank you for your cooperation.

WOMEN & THE LAW - Prof. Sheila McIntyre of the Faculty of Law at Queen's University will give a talk on February 18 at 5:00 in the Common Room on the topic of: «Sexual Assault Law Reform and Women's Equality Rights: A Discussion of the Proposed Amendments to the Criminal Code». All are welcome, refreshments will be

served!

EDUCATIONAL EQUITY COMMITTEE/L.S.R. - Prof. Sheila McIntyre (Queen's Univ.) and Prof. David McNally (Political Science, York Univ.) will give a talk on Wednesday February 19 at 12:00 in the Moot Court on the topic of: «The Tyranny of the Politically Correct: Two Responses». All are welcome!

PRIX DE DISSERTATION EN DROIT DES RESSOURCES NATURELLES - Un prix de \$1000 sera attribué pour la meilleure dissertation portant sur un aspect du droit des ressources naturelles. La dissertation choisie sera normalement publiée par l'Institut. Les dissertations ne doivent pas dépasser 75 pages tapées à double interligne, incluant les notes infra-paginaires. Les dissertations doivent porter sur un thème juridique précis, i.e. qu'elles doivent soulever et traiter des questions juridiques. Bien que les candidats soient encouragés à analyser les ramifications politiques de leur sujet, les dissertations ne devraient pas avoir pour base une analyse purement politique. Bien que le droit des ressources naturelles englobe les questions environnementales, les dissertations portant sur l'environnement ne seront acceptées que si elles traitent spécifiquement des ressources naturelles. Contrairement aux bourses d'études et autres prix universitaires, un candidat ne doit pas avoir reçu d'autre soutien financier pour préparer sa dissertation. Pour plus de renseignement, veuillez contacter le prof. Stephen Toope.

EDUCATION EQUITY: AN INSTITUTIONAL RESPONSIBILITY

By Glenn Betteridge, BCL I

Take a look around as you sit in class. Who do you see? Now take a look around as you leave the confines of the McGill campus, or on the Metro on the way home. Better yet, go down to Municipal Court one morning and see whose on trial and for what «crime». One thing becomes apparent. Canadian legal education does not reflect the diversity, nor does it address the concerns of the Canadian population. The Special Advisory Committee to the Canadian Association of Law Teachers is not so kind in their criticism.

In a report entitled «Equality in Legal Education ... Sharing a Vision ...; Creat-

ing the Pathways ...» the members of the Special Advisory Committee conclude «that legal education has played more than a passive role in creating existing conditions of inequality. Indeed, Canadian legal education actively practices and reproduces systemic discrimination.» It might be easy to ignore the Special Advisory Committee's findings if it weren't for the fact that the Committee members speak with authority, as people living with one foot inside and one foot outside of the Canadian legal system. Three of the Committee members have experience with provincial human rights commissions, Trish Monture is a Mohawk woman and law professor at the University of Ottawa, and Joanne St. Lewis is Education Equity Director at the

same institution.

But they aren't alone in talking about the shortcomings of Canadian legal education. In reading «Equality in Legal Education...» I remarked upon many of the themes highlighted by Donald McRae, Dean of the University of Ottawa Faculty of Law when he spoke at McGill last semester. In theory, ideas such as justice and equality are central to the teaching and practice of law. In practice the Canadian legal system is imbued with many discriminatory assumptions and attitudes, both on the personal and institutional levels. A career in law is not the first choice for many individuals from the

Cont'd on p.3

Education Equity Cont'd from p.2

Aboriginal, non-white, ethnic, disabled, lesbian and gay communities who, not surprisingly, have a very negative impression of the role law plays in society. Does anyone remember the Oka «crisis», Anthony Griffin, Marcelus François, or the police attacks on Montréal's lesbian and gay community in the summer of 1990 and the institutional responses to these events? «Equality in Legal Education....» calls for a systemic change in the areas of curriculum, recruitment and admission of students, faculty appointments, evaluation methods, and institutional processes. The transformation of Canadian law schools is a long-term project, «central to the very legitimacy of the very enterprise of legal education. It is about the social relevance of law» reads the Report. The responsibility for change above all is an institutional one. Commitment must begin at the highest level (i.e.: in the office of the Dean) extending down to the students and beyond the university into the various communities. The liberal notion of procedural equality (equality of opportunity) is eschewed in favour of a more «proactive and differentiated concept» based on substantive outcomes. Treating people equally does not always mean treating them the same.

One main target of the Report is the narrow conception of merit encouraged by law schools, the most glaring examples being the G.P.A.-L.S.A.T. driven admission procedures and reliance on 100% final exams, which serve to create differences among people instead of fostering respect for them, thereby excluding people who have something unique to bring to law school. The Report does not call for a special category to be established (one that only serves to perpetuate hierarchy), but rather proposes a broader

category for all applicants, which would take into account their life experience, insights, community involvement and plans to make a contribution to society. Active recruitment is also necessary to encourage those who have traditionally faced discrimination: -people don't tend to flock to where they are not wanted.

The problem does not end with attracting non-traditional applicants. Once in the system, law school can be an alienating experience for individuals who do not identify with dominant «Thinking like a lawyer» approach to knowledge. «Equality in Legal Education..» sets out an eight point «Shared Vision» which the Committee proposes as a necessary foundation for all successful educational equity measures. At the basis of this «Shared Vision» are the notions of entitlement, responsibility, consultation, commitment and the centrality of equality-seeking to legal education. Concrete proposals include broader admission policies, active recruitment, study report, the need to extend the curriculum beyond courses that reflect a narrow range of human experience and legal issues, the creating of spaces for student support groups, anti-racist and anti-discriminatory training, an active attempt to diversify faculty and staff, and support for students in finding appropriate job opportunities including graduate studies.

The Report's holistic approach outlines the basic principles of education equity, the specifics of which must be worked out with a great deal of creative thinking and attention to the needs and concerns of equality-seeking groups. Education equity is a problem for everyone involved in legal education. It is not up to those who have been traditionally excluded to find solutions. A long-term education equity policy will benefit us all. Who doesn't want law school to become a more cooperative and humane environment?

EDUCATION EQUITY AT MCGILL

An ad hoc Education Equity Committee was established at McGill Faculty of Law last year during the Winter semester under the guidance of professors Sheppard and Foster. In October, the Committee was officially recognized and mandated by Dean Morissette. The Committee was to be comprised of professors Sheppard and Foster as well as two students to be solicited through the L.S.A.. Although such a structure and selection process is the norm for committees, many students who have since joined the Education Equity Committee felt it wasn't appropriate for addressing the problem of systemic discrimination.

As it stands, the Committee is open to anyone who is interested and willing to work and has met three times since October; Attendance varies from 7 to 18 people. The official mandate of the Committee, as outlined in a Memo from Dean Morissette, is: (1) to identify issues of educational equality and outline different approaches towards their solution; (2) to solicit and collect information on the treatment of educational equity issues at other law faculties and universities in Canada or elsewhere; and (3) to recommend concrete steps towards the treatment of complaints raising issues of educational equity.

No small task! To this end the Education Equity Committee has split up into six working groups, including curriculum and special events, admissions and access, tutorials and support, discriminatory incidents and proactive policies, liaison with the community and the profession, and communication. The next meeting of the Committee will be in mid-February. The exact date, time and place will be announced in the *Quid* and posted on the cork boards in the stairwells. For more info, contact May Chui or Professor Sheppard.

Law Journal/Revue de droit
Suite de p.1

B. LE FORMAT DE LA REVUE

Profitez bien de cette dernière occasion d'obtenir votre exemplaire du numéro 36(4), car plus jamais la Revue n'aura-t-elle la même apparence.

Pour des raisons écologiques, de marketing, et d'esthétique, l'équipe du volume 37 effectuera les changements suivants:

-la Revue sera imprimée sur du papier recyclé. L'épaisseur et la qualité du papier n'en seront pas affectées sauf que sa blancheur diminuera un peu.

-la page couverture ne sera pas de «Hawaiian Sand», mais à «Gris». Cette nouvelle couleur ressemble beaucoup à la couleur originale de la Revue, jusqu'au moment où elle fut changée pendant les années 80s. La table des matières sera imprimée en noir sur la page couverture. Donc, il y aura trois couleurs en tout: le gris, le bordeaux, et le noir. La page couverture sera elle-aussi fabriquée de fibres recyclées.

-on mettra la page «Les amis de la Revue/Law Journal Patrons» davantage en évidence afin de reconnaître nos nouveaux amis.

-la première page de chaque article indiquera quelle devrait être sa citation

-on éliminera l'espace qui se trouve au haut de chaque page. Ceci aura comme effet de diminuer l'épaisseur de La

**Revue de 5%
C. THE RECESSION**

The Journal, like any other small business, is being hit very hard by the recession. Loss of subscribers and advertisers, compounded by the effects of the G.S.T., and increased printing and postage expenses have resulted in a less than rosy financial picture. In an effort to alleviate these effects, we undertook and were successful in renegotiating our relationship with our printer (which will save us thousands of dollars). We are also reducing our postage costs through various means. On the revenue side, we conducted a subscription drive in Ontario and the United States, we are continually soliciting for advertising in Quebec and we have acquired a few more patrons. The highlight of this year occurred when the federal gov-

ement renewed our grant for another three years. If you have any other ideas of how we can [legally] fight the recession, please don't hesitate to tell us!

D. DANS LES PROCHAINS NUMÉROS

Le premier numéro du volume 37 sera disponible à partir de la troisième semaine de mars. vous êtes sûrement aussi impatients que nous de voir paraître le numéro 37(2) qui sera le numéro spécial sur le règlement de différends internationaux.

If you have any questions or comments about the Journal, please don't hesitate to speak to one of our members. Or if you feel particularly brave, try (carefully) crossing the street, and visit us at our offices in the basement of 3661 Peel.

3RD annual
BLUE DOG
charity Bash
\$5.00 adm.
Wednesday February 19, 1992 - 8:00 pm
3550 st. laurent
proceeds go to:
"DANS la RUE"

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Rédacteur-en-chef/Editor-in-chief: Jean-Philippe Gervais **Directeur artistique/Artistic Director:** Michael Kleinman **Directeur de l'information/News Director:** Michael Williamson **Directrice administrative/Administrative Director:** Marie-

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Diary of a first-year student
Cont'd from p.1

the rule of law in Russia. He notes that he is indeed very concerned that law should operate effectively in his country. He asks for my advice.

"Well Boris", I begin to explain slowly and methodically "you have to understand that there is no one precise meaning for law. One could be an analytical positivist, but then again one might have a preference for the sociological approach of law. And there is, of course, the school of critical legal studies....."

The line goes dead. It must be so frustrating trying to run a country where technology fails at the most crucial times.

WEDNESDAY

Off I go to see Justice LaForest speak in the moot court about new developments in commercial law. It is a most fascinating talk.

In the evening I drop in at a Crescent Street bar. LaForest, J. who is sitting above at a corner table recognizing me and waves me over. I ask him about a complicated matter in criminal law that has been troubling me recently. No sooner do I finish the question than the karaoke machine begins to play and LaForest, J. jumps up and does quite a decent rendition of Eric Clapton's «I Shot the Sheriff», I must say that it is a really creative reply. We are so fortunate to have such a renaissance man on the Supreme Court.

THURSDAY

Having finally finished my treatise on the common law offence of «scandalizing the court» (which I expect

will be published in the letters to the editor section of The Gazette) I decide to drop in on my common law property class. This proves to be a great disappointment in that the professor is going on about the same topic as when I was last there. It's all fee simple this and fee simple that. Why is there so much attention being paid to fees. As future lawyers should we not be concerned with helping to alleviate some of the misery and despair in the world rather than continuously worrying about how we're to be paid? Some of us have ideals; we're not all careerists.

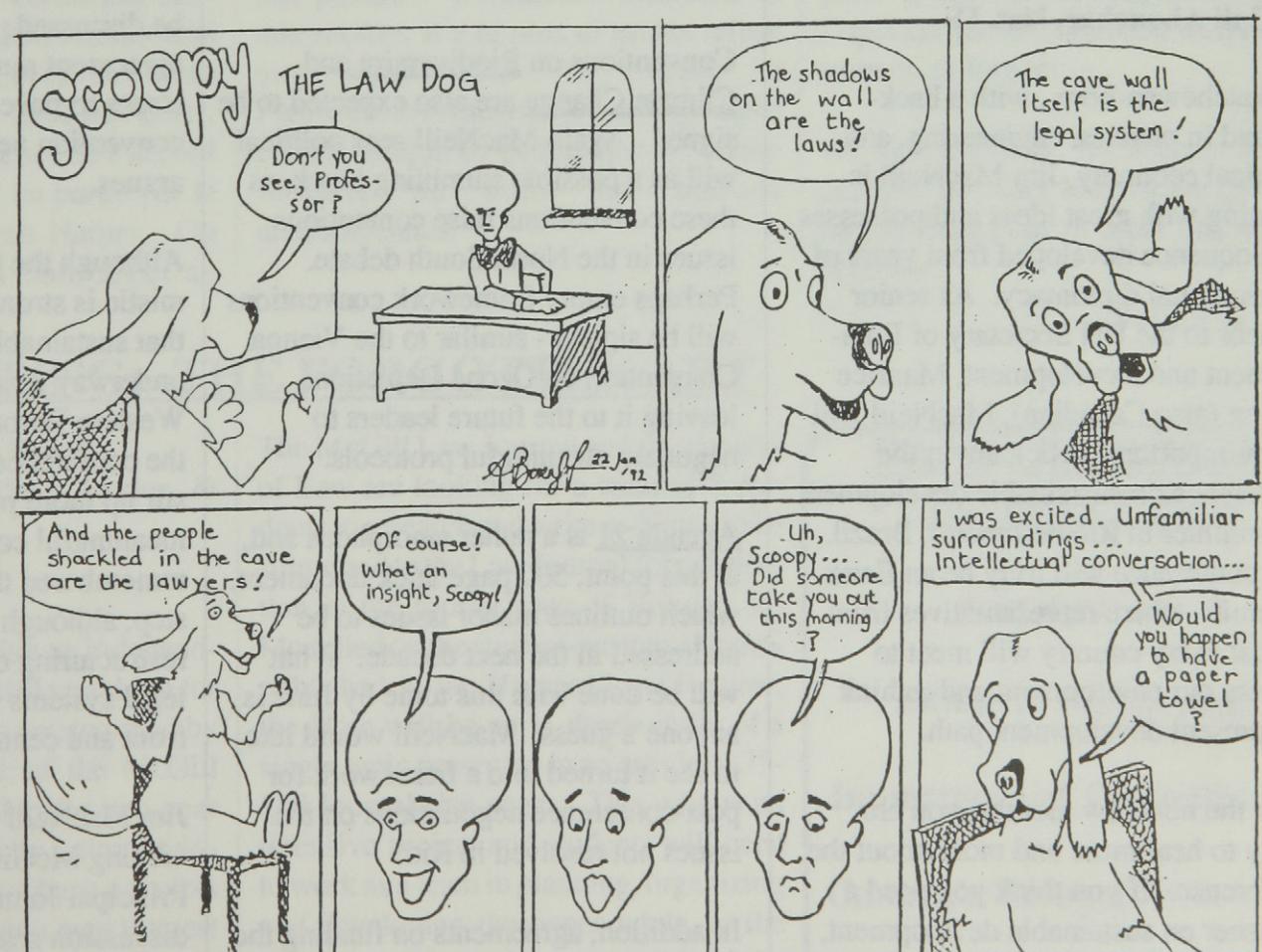
FRIDAY

With great excitement I arrive for careers day. The representatives of the law firms have clearly done their homework: one recruiter evidently knows that I did a course in political philosophy and asks about my Marx. I explain that I have a rather good understanding of The Eleven

Theses on Feuerbach but have not yet made a thorough study of The Communist Manifesto. We are then interrupted by one of my classmates who while walking by asks how I am. As it happens I am not feeling all that well and am rather stuffed up. My reply that "I caught a cold" comes out sounding like "I got the gold". No sooner do I utter these words than several recruiters rush over and introduce themselves to me. Within minutes I receive two dinner invitation, eight people ask whether I would like to take a year off while on their firm's payroll, and one man shows me pictures of a yacht his firm has in the Caribbean while assuring me that it is available for my use anytime I might allow the firm to fly me down there. I must say I am terribly impressed with the way that all these recruiters are so concerned to comfort someone with a cold. I think we are now beginning to see a kinder, gentler legal community.

THE PITS

by Arnold Bornstein



GREENSPACE

By Juli Abouchar, Nat.IV

«Environmentalists have won on every point...»

This was the reaction of environmental lawyer, Elizabeth May, to the recent Supreme Court ruling on the Oldman River dam. The court upheld an earlier Federal Court decision in finding that the federal government must carry out environmental assessment reviews of provincial projects touching areas of federal concern. Despite the dam being completed and 65 percent full of water, the case is seen as a victory. Environmentalists and native groups are still hoping that the dam will be drained to save fish habitat, a cottonwood forest, and sacred In-

dian sites, and to prevent mercury pollution. However, even if the dam is allowed to operate, the S.C.C. ruling will have lasting significance for environmentalists.

First, this decision reflects democracy, strengthening citizen involvement in developmental decisions, which increasingly affect us all. The Supreme Court ruling is a tool for citizens to force environmental review of development previously beyond our reach.

Second, this decision will bring federal environmental review to a wide variety of projects, from logging roads to dams, including the Great Whale project.

Third, the Supreme Court ruling paves

the way for the new piece of federal environmental assessment legislation presently proceeding through Parliamentary readings. This Act will replace the Guidelines Order, which up until now has been the instrument that environmentalists have used in suits such as Oldman.

The only immediately evident problem is the non-binding nature of the reviewers' recommendations. Potentially, the weight given to the recommendations will vary with commitment to the environment and the public profile of the particular project. This underlines the importance of educational and lobbying activities of environmental groups but also requires that we all educate ourselves on the basics of sustainable development.

The Road to Rio

By Juli Abouchar, Nat. IV

Saskatchewan-born , with a background in physics, engineering, and political economy, Jim MacNeill is bursting with great ideas and possesses an eloquence developed from years of international diplomacy. As senior advisor to the UN Secretary of Environment and Development, Maurice Strong (also Canadian), MacNeill will be an important participant in the conference on sustainable development the summer in Rio de Janeiro, Brazil. The conference will truly be an Earth Summit - where representatives from almost every country will meet to discuss our environment and rethink our present development path.

Over the next few months, you are likely to hear more and more about the conference. If you think you need a refresher on sustainable development, pick up a copy of Our Common Future (1987) or Jim MacNeill's Beyond

Interdependence. Both are available at most bookstores.

Conventions on Biodiversity and Climate Change are also expected to be signed. Again MacNeill sees political will as a possible stumbling block, as these conventions raise contentious issues in the North South debate. Perhaps empty framework conventions will be signed - similar to the Vienna Convention on Ozone Depletion, leaving it to the future leaders to negotiate meaningful protocols.

Agenda 21 is a rather amorphous and, at this point, 500 page thick document, which outlines major issues to be addressed in the next decade. What will be done with this tome by June is anyone's guess. MacNeill would like to see it turned into a framework for post-conference negotiations on the issues not resolved in Rio.

In addition, agreements on funding the Rio package, transfer of technology from the North to the South, and reform

of international institutions along sustainable development lines will also be discussed. At the very least, agreement must come on these three issues to pave the way for future convention negotiations, MacNeill argues.

Although the temptation to be pessimistic is strong, MacNeill reminds us that sustainable development is already underway especially in Japan and Western European countries. Even if the conference appears, in the end, to stir up more political debates than meaningful conventions, it must be remembered that Rio is only the next step, although a significant one, in a restructuring of our economies and legal systems to put the environment front and centre in decision-making.

Jim MacNeill spent Tuesday, Feb. 3 visiting McGill at the invitation of Principal Johnston, giving lectures and discussion sessions, meeting faculty and students.